



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 677-22
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF FORMER █, USN,
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Ref: (a) Title 10 U.S.C. § 1552

Encl: (1) DD Form 149 w/enclosures
(2) DD Form 214, Certificate of Discharge or Release from Active Duty, 28 Jan 19
(3) Findings of the Informal Physical Evaluation Board Proceedings, 19 Sep 2018
(4) DES Informal PEB Election of Options, 5 Oct 2018
(5) Notification of TDRL 1st Periodic Physical Examination, 22 Jan 2020
(6) Findings of the Physical Evaluation Board Proceedings, 21 Feb 2020
(7) E-mail subject "█ FINDING_Redacted.pdf," 17 May 2020
(8) NPC Itr Notification of Discharge from the TDRL, 24 Jun 2020
(9) Advisory Opinion by Secretary of the Navy, Council of Review Boards, 3 Nov 2022

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that he appear before the Formal Physical Evaluation Board (FPEB) and that he be paid severance pay.
2. A three-member panel of the Board, sitting in executive session, considered Petitioner's application on 9 March 2023. The names and votes of the panel members will be furnished upon request. Petitioner allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found that, before applying to this Board, he exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:
 - a. Petitioner enlisted in the Navy and commenced a period of active duty on 12 December 2005. On 19 September 2018, an Informal Physical Evaluation Board (IPEB) convened to consider the findings and recommended disposition of Petitioner's Medical Evaluation Board as well as the Department of Veterans Affairs (DVA) Disability Evaluation System (DES) proposed rating. The IPEB found Petitioner to be unfit with a combined 60% disability rating; 50% disability for major depression, with post-traumatic stress disorder (PTSD) as a related diagnosis, and 10% disability for right ankle pain. Petitioner accepted the results of the IPEB and was

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placed on the Temporary Disability Retired List (TDRL) on 28 January 2019. Enclosures (2) through (4).

b. On 22 January 2020, Petitioner was notified of his first TDRL periodic physical exam. Per the notification, Petitioner was instructed to contact the ██████████-██████████, ██████████ immediately to schedule a Periodic Physical Examination (PPE) to assess the conditions for which he was placed on the TDRL. The notification also warned that failure to coordinate or appear for his PPE will result in suspension of his retired pay until the examination has been completed, and that retroactive pay for time elapsed between suspension and reinstatement of retirement pay is not authorized. Moreover, Petitioner was notified that his pay and benefits will be terminated after five years on the TDRL unless his final disposition is determined at an earlier date. Enclosure (5).

c. On 21 February 2020, the IPEB convened and found Petitioner unfit with a combined disability rating of 20%; 10% for major depression, with PTSD as a related diagnosis, and 10% for right ankle. Enclosure (6).

d. On 17 May 2020, Petitioner was e-mailed for what appears to be a second attempt by the Navy Personnel Command (NPC), explaining that NPC had not received confirmation that he received his “e-mailed findings.” The e-mail enclosed four attachments, to include an “Election of Options (EOO),” “cover letter,” and “separation sheet.” Enclosure (7).

e. On 24 June 2020, NPC (PERS-954) mailed Petitioner a letter stating “you have been removed from the Temporary Disability Retired List and discharged from the Navy service by reason of physical disability with severance pay effective 1 July 2020. The Defense Finance and Accounting Service . . . has been advised of this action and will compute the amount of severance pay to which you are entitled and will notify you accordingly. Please allow 90 days for payment processing.” Enclosure (8).

f. In his application at enclosure (1), Petitioner seeks to have his IPEB case reviewed by the FPEB. Petitioner contends that he was never notified of the result of his IPEB that resulted in his discharge from the TDRL, and that, had he received the results, he would have requested the option of seeking review by the FPEB. Petitioner explained that the package from NPC relating to his discharge was mailed to his former address, and he only received the NPC package in July 2021 when he went back to that house for a different reason. Petitioner also requests that he be paid his severance pay. In support of this request, he asserts he never received his severance pay.

g. In order to assist the Board in reviewing this petition, the Board requested, and received the enclosure (9) advisory opinion (AO) from the Secretary of the Navy, Council of Review Boards. According to the AO, “the evidence does not support the assertion that the PEB failed to properly notify the member of the issuance of his Informal PEB findings.”

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CONCLUSION

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's requested relief shall be granted in part, on the basis of injustice.

The Board concluded that, based on all of the facts and circumstances in this particular petition, and the overall context of the timing of the materials sent, there was an injustice in Petitioner's naval record. In particular, the Board found it credible that Petitioner did not receive the e-mail from NPC. The Board observed that Petitioner's materials were mailed to his former address, and that he timely filed a petition after learning of the alleged injustice. The Board acknowledged that the AO was considered unfavorable to the Petitioner's position, but the Board nevertheless determined that sufficient doubt existed that Petitioner received the materials. In other words, although there is evidence the PEB attempted to properly notify Petitioner of the issuance of his IPEB findings, the Board believed Petitioner's contention that he did not receive the PEB findings that were e-mailed to him twice by the PEB. The Board noted that the e-mail address in Petitioner's application is different from the e-mail address Petitioner had initially provided to the PEB. Therefore, the Board found it in the interests of justice to direct the PEB to re-notify Petitioner of his PEB findings at his current address to allow him to request a formal PEB hearing.

That part of the Petitioner's request for corrective action that exceeds the foregoing be denied. With respect to Petitioner's request that he be paid his severance pay, the Board found no error or injustice in Petitioner's record. Specifically, the Board determined that it appeared Petitioner was to be paid severance pay upon his discharge from the TDRL. His contention that he has not yet receive such pay should be addressed to the Defense Finance and Accounting Service, which is the entity that issues such payments, and not to this Board.

RECOMMENDATION

In view of the above, the Board recommends the following corrective action as follows:

Within 60 days of receiving this decision, the Secretary of the Navy, Council of Review Boards shall provide Petitioner the most recent IPEB findings in his case, with all attachments, by e-mail to the e-mail address, [REDACTED]@gmail.com. Petitioner shall be allowed 30 days from notification from the PEB to submit his EOO form and any other required forms in response to the PEB. Petitioner will be afforded all due process rights afforded by the PEB process.

That no further changes be made to Petitioner's naval record.

That a copy of this report of proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

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5. The foregoing action of the Board is submitted for your review and action.

4/6/2023

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

_____ Reviewed and Approved Petitioner's Request (Grant Relief)

Reviewed and Approved Board Recommendation (Partial Relief)

_____ Reviewed and Approved Advisory Opinion Recommendation (Deny Relief)

5/12/2023

[REDACTED]

Assistant General Counsel (M&RA)

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